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K&L Gates LLP P.O. Box 1135 CHICAGO, IL 60690			EXAMINER ARAQUE JR, GERARDO	
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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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3  
4 BEFORE THE BOARD OF PATENT APPEALS  
5 AND INTERFERENCES  
6

7  
8 *Ex parte* GREGORY J. NORSWORTHY,  
9 BRYAN WILSON BADGER,  
10 BHAJMOHAN (RICKY) SINGH,  
11 and  
12 ROBERT CARVALHO  
13

14  
15 Appeal 2009-001097  
16 Application 09/882,198  
17 Technology Center 3600  
18

19  
20 Decided: August 31, 2009  
21  
22

23  
24 *Before* MURRIEL E. CRAWFORD, HUBERT C. LORIN, and ANTON W.  
25 FETTING, *Administrative Patent Judges*.  
26  
27 CRAWFORD, *Administrative Patent Judge*.  
28

29  
30 DECISION ON APPEAL  
31

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection of claims 1-24. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellants invented systems and methods for marketing pet foods, and more particularly, to an apparatus configured to the manufacture of a pet food customized to the health and nutrition requirements of an individual pet (Spec. [0001]).

Claim 1 under appeal is further illustrative of the claimed invention as follows:

1. A kiosk configured for selling and manufacturing customized food for a pet, said kiosk comprising:

a customer interface area for receiving information regarding the pet;

a biological sample analysis and handling area for analyzing the biological information regarding the pet;

a computer for receiving information regarding the pet and generating a pet profile;

a base product display area;

at least one product additive storage area having at least one shelf; and

an ingredient mixing and customer observation area.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Steury

Burghardi

US 6,416,270 B1

US 6,681,717 B2

Jul. 9, 2002

Jan. 27, 2004

The Examiner rejected claims 1-4 and 6-11 under 35 U.S.C. § 102(e) as being anticipated by Steury; rejected claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Steury; rejected claims 12-15 and 17-24 under 35 U.S.C. § 103(a) as being unpatentable over Burghardi; and rejected claim 16 under 35 U.S.C. § 103(a) as being unpatentable over Burghardi in view of Steury.

We AFFIRM-IN-PART.

## ISSUES

Did the Appellants show the Examiner erred in finding that the interactive user data entry panel of the library kiosk of Steury corresponds to a customer interface area for receiving information regarding a pet, as recited in independent claim 1, because the interactive user data entry panel is functionally incapable of receiving the information regarding the pet?

Did the Appellants show the Examiner erred in finding that Burghardi discloses providing a questionnaire at the consumer interaction station for profiling pets, as recited in independent claim 12?

Did the Appellants show the Examiner erred in finding that Burghardi renders obvious receiving at least one of a biological sample and pet questionnaire information at the customer interface area, as recited in independent claim 20?

Did the Appellants show the Examiner erred in finding that Burghardi discloses a kiosk, as recited in independent claim 20, because Burghardi does not disclose that all of the steps set forth in independent claim 20 are performed at the kiosk?

1 Did the Appellants show the Examiner erred in finding that Burghardi  
2 discloses selling or manufacturing a customized food for a pet, as recited in  
3 independent claim 20, because Burghardi is directed to customized feed  
4 products for a large number of animals that produce food and dairy products  
5 as opposed to an individual household pet?

6  
7 FINDINGS OF FACT

8 *Specification*

9 Appellants invented systems and methods for marketing pet foods,  
10 and more particularly, to an apparatus configured to the manufacture of a pet  
11 food customized to the health and nutrition requirements of an individual pet  
12 (Spec. [0001]).

13  
14 *Steury*

15 Stuey discloses an interactive, self-service, library kiosk that  
16 dispenses sundry items and accepts returns (col. 1, ll. 52-54).

17 The kiosk is an interactive, multi-media dispenser that responds and  
18 confirms user entered selections and personal identification numbers (col. 2,  
19 ll. 6-9).

20 A user's pin, storage, and inventory data is programmed into the  
21 digital controller that monitors user receipts, returns, and payments (col. 2,  
22 ll. 56-58).

23 Kiosk 2 includes display case 12 with interactive user data entry panel  
24 22 mounted to one side. Panel 22 includes faceplate 28 containing printed  
25 graphics, icons 40, and display screen 29. Icons 40 and monitor 29 provide

1 detailed instructions and lists of stored items. The user follows the menu'd  
2 instructions and selection sequence displayed at the monitor 29 to make  
3 appropriate selections (col. 4, ll. 29-61).

4  
5 *Burghardi*

6 Burghardi discloses a system for determining customized feed for  
7 animals (col. 2, ll. 11-13).

8 Data is stored for animal data representative of the characteristics of  
9 the animal, feed data representative of the feed ingredients located at a first  
10 location, second feed data representative of the feed ingredients located at a  
11 second location, and evaluation data representative of one or more  
12 evaluation criteria. Customized feed is then created by processing and  
13 manipulating these data sets (col. 2, ll. 46-54; col. 4, ll. 26-34).

14 The system includes processing means for generating the profile data  
15 representative of a nutrient profile for the animals based upon the animal  
16 data (col. 2, ll. 38-40).

17 Processors may be located in devices such as workstations, portable  
18 PCs and/or hand held computers (col. 3, ll. 32-34).

19  
20 PRINCIPLES OF LAW

21 *Obviousness*

22 During examination, the examiner bears the initial burden of  
23 establishing a prima facie case of obviousness. *In re Oetiker*, 977 F.2d  
24 1443, 1445 (Fed. Cir. 1992).



1 returns, as would be necessary to input information regarding a pet. Indeed,  
2 the cited portions of Steury appear to even lack a keyboard or other input  
3 devices that would provide the user an opportunity to input such  
4 unstructured information. Accordingly, because interactive user data entry  
5 panel 22 appears to be functionally incapable of receiving information  
6 regarding a pet, we cannot sustain the rejection of independent claim 1.

7 By virtue of their dependence on independent claim 1, we also do not  
8 sustain the rejections of dependent claims 2-11.

9

10 *Questionnaire Answers*

11 We are persuaded of error on the part of the Examiner by Appellants'  
12 argument that Burghardi does not disclose providing a questionnaire at the  
13 consumer interaction station for profiling pets, as recited in independent  
14 claim 12 (App. Br. 18-19; Reply Br. 7-8). Burghardi discloses collecting a  
15 variety of information that is processed and manipulated in order to create a  
16 customized feed. However, the portions of Burghardi cited by the Examiner  
17 do not indicate the manner in which such information is collected.

18 Accordingly, because the Examiner has not shown that the pet information  
19 in Burghardi is collected using a questionnaire, as recited in independent  
20 claim 12, a prima facie case of obviousness has not been established, and  
21 thus we cannot sustain the rejection of independent claim 12. *See In re*  
22 *Oetiker*, 977 F.2d at 1445.

23 By virtue of their dependence on independent claim 12, we also do  
24 not sustain the rejections of dependent claims 13-19.



1           *Biological Sample*

2           We are not persuaded of error on the part of the Examiner by  
3 Appellants' argument that Burghardi renders obvious receiving at least one  
4 of a biological sample and pet questionnaire information at the customer  
5 interface area, as recited in independent claim 20 (App. Br. 18-19; Reply Br.  
6 7-8). For the same reasons as set forth above with respect to independent  
7 claim 12, Burghardi does not disclose a questionnaire. However, unlike  
8 independent claim 12, independent claim 20 recites receiving *at least one* of  
9 a biological sample and pet questionnaire information. Accordingly, we  
10 address whether Burghardi also renders obvious receiving a biological  
11 sample.

12          Pages 13-14 of the Examiner's Answer sets forth a reasonable  
13 rationale for modifying Burghardi to include receiving and analyzing a pet's  
14 biological sample in order to create a better customized pet feed. The  
15 Appellants argue that one of ordinary skill in the art would not *need* to  
16 receive and analyze a biological sample to obtain the animal data used in the  
17 feed product for Burghardi (Reply Br. 7-8). However, necessity is not the  
18 test for obviousness. The Examiner, after setting forth a reasonable  
19 rationale, is only required to show that such a modification would have been  
20 within the abilities of one of ordinary skill in the art. As the Examiner has  
21 set forth a reasonable rationale for modifying Burghardi, and we are not  
22 persuaded by Appellants' arguments as to why one of ordinary skill would  
23 not have modified Burghardi in this manner, we will sustain the rejection of  
24 independent claim 20 under this rationale.

1           *Kiosk*

2           We are not persuaded of error on the part of the Examiner by  
3 Appellants' argument that Burghardi does not disclose a kiosk, as recited in  
4 independent claim 20, because Burghardi does not disclose that all of the  
5 steps set forth in independent claim 20 are performed at the kiosk (App. Br.  
6 16-17; Reply Br. 6-7). Independent claim 20 recites providing the kiosk  
7 including *at least one* of the areas performing various steps. Accordingly, as  
8 long as Burghardi discloses a structure that performs one of the recited steps,  
9 the claim recitation is met.

10          Burghardi discloses workstations for generating the profile data  
11 representative of a nutrient profile for the animals based upon the animal  
12 data. The Examiner has set forth a reasonable rationale for analyzing a pet's  
13 biological sample. Accordingly, Burghardi discloses a workstation that  
14 performs the processing step of independent claim 20. Thus, the kiosk  
15 recitation is met by Burghardi's workstation.

16  
17          *Household Pet*

18          We are not persuaded of error on the part of the Examiner by  
19 Appellants' argument that Burghardi does not disclose selling or  
20 manufacturing a customized food for a pet, as recited in independent claim  
21 20, because Burghardi is directed to customized feed products for a large  
22 number of farm animals that produce food and dairy products as opposed to  
23 an individual household pet (App. Br. 16-17). Initially, we note that the  
24 concept of *individual household* pets is not set forth in the claims, and thus  
25 that argument is not given any weight. *See CollegeNet, Inc. v.*  
26 *ApplyYourself, Inc.*, 418 F.3d at 1231. Moreover, we agree with the

Examiner that individual farm livestock are considered pets in certain situations. Accordingly, absent the Appellants' establishment of a narrower definition of pets within the claims, we will sustain the rejection of independent claim 20 under this rationale.

#### CONCLUSION OF LAW

On the record before us, Appellants have shown that the Examiner erred in rejecting claims 1-19.

On the record before us, Appellants have not shown that the Examiner erred in rejecting claims 20-24.

#### DECISION

The decision of the Examiner to reject claims 1-19 is reversed.

The decision of the Examiner to reject claims 20-24 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

#### AFFIRMED-IN-PART

hh

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